

Dr. D.S. Chaudhary Vs. Ivth Additional District Judge, Meerut and Others

Dr. D.S. Chaudhary Vs. Ivth Additional District Judge, Meerut and Others

SooperKanoon Citation : sooperkanoon.com/452995

Court : Allahabad

Decided On : Aug-28-1998

Reported in : 1999(1)AWC289

Judge : J.C. Gupta, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 16(1) and 18; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rules 9(3), 13 and 13(4);

Appeal No. : C.M.W.P. No. 27848 of 1998

Appellant : Dr. D.S. Chaudhary

Respondent : ivth Additional District Judge, Meerut and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : M.D. Singh, Adv.

Judgement :

J.C. Gupta, J.

1. The dispute relates to shop No. 151/2, P. L. Sharma Road, Beghum Bagh, Meerut. By the order dated 27.4.1993 of the Rent Control and Eviction Officer (R.C. and E.O.), the said shop was declared vacant. The landlady on 24.5.93

made an application for the release of the shop in her favour showing her need for the same. This application was kept pending for months together until the petitioner also arrived at the scene on 16.8.1998 by moving application for allotment. He contested the release application of the landlady, filed his objection and also adduced evidence and in real sense participated in the proceedings relating to the disposal of release application. By the order dated 20.3.1995 the R.C. and E.G. after taking into consideration the petitioner's objections and evidence, rejected the release application of the landlady and on the same day, he proceeded to allot the disputed shop in favour of the petitioner. Aggrieved, the landlady challenged both the orders of the R.C. and E.O. rejecting her release application and making allotment in favour of the petitioner. The respondent No. 1 has allowed both the revision by a common judgment dated 20.8.1998 and the order of allotment made in favour of the petitioner has been quashed and the shop in dispute has been released in favour of the landlady-respondent No. 3. Feeling aggrieved, this writ petition has been filed seeking Issuance of writ of certiorari for quashing the order of the revisional court.

2. A perusal of the order impugned indicates that the revisional court has set aside the order of the R.C. and E.O. whereby the release application of the landlady was rejected, on the ground that the R.C. and E.O. acted beyond jurisdiction in taking into consideration the objection and evidence of the petitioner, whose status was simply that of a prospective allottee. It also came to the conclusion that the order of allotment made in favour of the petitioner was bad in law having been made on the same day on which the release application was rejected, which was in total disregard of Rule 9 (3) of the Rules. The R.C. and E.O. then examined the evidence available on the record and released the shop in question finding the need of the landlady to be bona fide.

3. The order of the R.C. and E.O. rejecting the application of release of the landlady has been set aside by the revisional court on the ground that the R.C. and E.O. committed a jurisdictional error in taking on record the objection and evidence of the petitioner and then considering the same while examining the claim of the landlady for the release of the shop in question. It cannot be doubted that the petitioner's status was that of a prospective allottee. Time and again this

Court has been holding repeatedly that the prospective allottee has no locus standi to object to the claim of the landlord for the release of a vacant building because he possesses no right or interest in the property or claim against the landlord so as to confer on him a right of hearing. He neither has any right to file objections nor evidence in opposition to an application for release made under Section 16 (1) (b) of the Act. In the case of Talib Hasan v. 1st Additional District Judge, Nainital and others, 1986 ID ARC 1, a Full Bench of this Court has laid down that the prospective allottee has got no right to be heard in the proceedings for release and the matter is entirely between the R.C. and E.O. and the landlord. It was held :

'The prospective allottee has also no right or interest in the property or claim against the landlord so as to be entitled to any hearing in the disposal of the release application on general principles or doctrine of audi alteram partem. The principle of audi alteram partem presupposes existence of some right or interest in the subject matter of the lis. It has already been said that the prospective allottee has no right or claim against the landlord nor any interest in the accommodation in dispute. He has, therefore, no right to be heard in opposition to an application for release filed by the landlord even on the above principle.'

4. Despite this well settled position of law, in the present case the R.C. and E.O. not only permitted the petitioner as a prospective allottee, to participate in the proceedings relating to the release application of the landlady but also considered his objections so also the evidence filed by the petitioner. This illegality vitiated the entire proceedings. He should have independently without considering any objection and/or the evidence of the petitioner, examined the question whether the claim made by the landlady for the release of the shop was bona fide and covered under the provisions of Section 16 (1) (b) of the Act. The prospective allottee has no locus standi in such matters and he comes on the scene only after rejection of the release application and only thereafter he can ask for a hearing and consideration of his claim for the allotment. In the present case, the R.C. and E.O's. order rejecting the release application of the landlady was thus vitiated as null and void and the view taken by the revisional court is perfectly and legally sound.

5. It is apparent on the face of record and not disputed on behalf of the petitioner that the application for release of the landlady was made much prior in time to the application for allotment: made by the petitioner. Therefore, under law the petitioner's application for allotment could be considered by the R.C. and E.O. only after the application for release was rejected. The position is now well settled that the R.C. and E.O. gets jurisdiction to proceed in the matter of allotment only after the claim of the landlord for the release has been turned down and the release application is finally rejected. In this connection, a reference may be made to the Supreme Court decision of Swaroop Narain Srivastava v. IVth Additional District Judge and others, JT 1994 15) SC 221, wherein it was held that it is nowhere provided in the Act or the Rules that an application for allotment of a vacant building can be considered in preference to the application made for release of the vacant building by the landlord. On the other hand, Rule 13 which provided the procedure for consideration of the application made for the release of a vacant building by the landlord, by its sub-rule (4) requires that landlord's application for release under the Rules shall as far as possible be decided within one month from the date of its presentation and no allotment in respect of a building covered by an application in that rule shall be made unless such application has been rejected. Similarly, in the case of Pativardhan Singh v. D. J. Kanpur Nagar and others. 1998 (1) ARC 435, I have taken the view that where application for release of the landlord was pending, the R.C. and E.O. could not assume jurisdiction to consider the application for allotment and make an order of allotment and the order of allotment, if made in such a situation, is a nullity and non-est order.

6. It has already been found above that the R.C. and E.O. exercised jurisdiction wholly in an illegal manner while dealing with the release application of the landlady and the order rejecting the release application was null and void and without jurisdiction. The effect of this would be that when the application for allotment was considered and allowed, the release application of the landlady would be deemed to be still pending and once that situation is arrived at, the R.C. and E.O. had no Jurisdiction to make any order of allotment. The expression 'that unless the release application has been rejected' connotes that unless the release application has been rejected in accordance with law and not in a manner not warranted under law. This problem can be viewed from another angle, since the

rejection of release application is sine qua non to the making of an order of allotment and once the order rejecting the release application is quashed as being null and void, all proceedings subsequent thereto including the order of allotment will also stand vitiated in law as being a nullity. Thus once the conclusion of the revision court setting aside the order of the R.C. and E.O. rejecting the release application is found to be perfectly legal and sound, the order of allotment made in favour of the petitioner would meet its death ipso facto with the revival of release application for consideration.

7. Apart from what has been said above, it would further be found that the order of allotment made in favour of the petitioner was bad in law as it was made in total disregard of Rule 9 (3) inasmuch as it was made on the same day on which the release application was rejected by the R.C. and E.G. Rule 9 (3) does contemplate making of the order on a future date. The revisional court has given cogent and valid reasons citing a number of authorities in support of his conclusion.

8. It is also well settled position of law and not disputed by the learned counsel for the petitioner that the revisional court in exercise of its jurisdiction under Section 18 of the Act has also the power to allow the release application itself if there is material on the record for taking such a decision. In the present case, it would appear from the judgment of the revisional court that while considering the release application of the landlady, respondent No. 1 took into account all the properties as alleged by the petitioner to be in the occupation of the landlady and it has been held clearly by the learned Judge that the other properties suggested were either in occupation of other members of the family of the landlady where separate businesses were being carried on or they were in occupation of tenants or were in dilapidated condition and the need of the landlady has been found to be bona fide. The conclusion of the learned Judge is thus fully supported by material on record.

9. One of the cardinal principle of law is that the person who seeks writ Jurisdiction of this Court must satisfy that he possesses an enforceable right whose infringement has caused great injustice to him. In the present case, once the proceedings relating to the decision of the release application stood vitiated as null and void and consequently, the order of allotment also, the petitioner is left with no

rights in himself which could be enforced and his position reverted back as that of a prospective allottee who has no locus standi or right to say anything in opposition to the claim of the landlady for the release of the shop. And since by the order of the revisional court the shop has been released in favour of the landlady, he has got no right to challenge the same in law, he, therefore, cannot be permitted to seek the relief asked for in this writ petition.

10. At this stage learned counsel for the petitioner stated that the petitioner is prepared to submit to the release order made in favour of the landlady and requested that he be given a reasonable time to vacate the shop in question so that he may make some alternative arrangement to shift his clinic from the disputed shop to some other place. In the circumstances, the petitioner is allowed time upto 31st December, 1998 to vacate the shop in question and hand over its vacant possession to the landlady subject to his filing an undertaking on affidavit to that effect before the R.C. and E.O. within a period of three weeks from today. In case such undertaking is not filed, the order extending time for delivery of possession upto 31st December, 1998 shall stand automatically vacated.

11. With the above concession given to the petitioner, the writ petition is dismissed in limine.